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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO BOLANOS,

Defendant and Appellant.

2d Crim. No. B266731
(Super. Ct. No. 2012003153)
(Ventura County)

Francisco Bolanos appeals after a jury convicted him on three counts of continuous sexual abuse (Pen. Code, § 288.5, subd. (a)[1)] and two counts of committing a lewd act upon a child (§ 288, subd. (a)), and found multiple victim allegations to be true (§ 667.61, subds. (b)(e)(4) & (5)). The trial court sentenced him to a state prison term of 45 years to life plus 12 years. Appellant

[1] All statutory references are to the Penal Code.

contends his convictions must be reversed for a violation of his *Miranda*[2] rights. We affirm.

STATEMENT OF FACTS

Appellant was convicted of sexually abusing two of his daughters, A. B. (born in 1992) and L. B. (born in 1994), and his stepdaughter E. M. (born in 1985). Rosa Bolanos, who married appellant in 1992, is the mother of all three children. Appellant first molested E. M. when she was five years old by putting his hand in her underwear and rubbing her vagina. On another occasion when E. M. was about six years old, appellant orally copulated her. When E. M. was eight or nine, appellant took her to a locker room and put his penis in her vagina.

When E. M. was nine or ten years old, appellant took her to Lake Casitas and had sexual intercourse with her while her brother Ar. B. waited in the car. Appellant abused E. M. for the last time in 1996 on Thanksgiving Day. As E. M. was sleeping in the top bunk of a bunk bed, appellant entered the room and tried to open her pajamas so he could touch her vagina. Appellant was trying to remove E. M.'s pajama bottoms when Rosa walked in an asked what he was doing. Rosa immediately called the police, but was only "semi-cooperative" with the responding officers. Ar. B., who had been asleep in the bottom bunk bed, told the police he had seen appellant's hands near

[2] *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

E. M.'s body and that appellant told Rosa he had touched E. M. "[i]n the butt." When the police spoke with E. M., she said appellant had never touched her inappropriately. E. M. lied because appellant had threatened to kill Rosa if E. M. told anyone about the molestations.

The next day, E. M. told Rosa that appellant had been abusing her and recounted the incident at Lake Casitas. Rosa was initially shocked, but then appeared to believe appellant when he told her nothing had happened.

Appellant began molesting A. B. and L. B. when each of them were about eight years old. Once, appellant told the girls to put honey on his penis and made them put their mouths on his penis. A. B. and L. B.'s younger sister C. B. recalled witnessing a similar incident. Appellant also had sexual intercourse with both girls on more than one occasion. One time he repeatedly went back and forth between them as the girls lie together in a bed in the living room. L. B. also recounted incidents when appellant forced her to fellate him; A. B. recalled witnessing one such incident. Rosa also witnessed one of the incidents and confronted appellant. Appellant stopped abusing L. B. for a while after that, but eventually the abuse resumed. Appellant continued to molest A. B. until she was about 17 years old and molested L. B. until she was 14. Both girls feared that appellant would kill them if they told anyone about the abuse.

E. M. decided to report appellant's abuse after discovering he had also been abusing her sisters. A. B. supported the decision but L. B. did not. In January 2012, E. M. and A. B. went to the police station and were interviewed separately. The police feared that appellant might harm his family, so they had E. M. call L. B. and ask her to have appellant pick her up at a theater in Ventura. After appellant left, the police went to the house and took Rosa into custody.

Oxnard Police Detectives Dale McAlpine and Juanita Suarez waited at the house for appellant, who returned home with L. B. at about 9:00 p.m. Detective Erica Escalante arrived shortly thereafter. Escalante told appellant that his family was at the police station and that she wanted to discuss something with him. Appellant agreed to go to the station and give a statement. In a videotaped interview that was played for the jury, appellant admitted sexually abusing his daughters but denied engaging in intercourse with them.

McAlpine took L. B. to the station and attempted to interview her. Although L. B. was initially reluctant to say anything, she later told the deputy district attorney that appellant had abused her.

DISCUSSION

Appellant contends his convictions must be reversed because the statements he made to the police were obtained in violation of his *Miranda* rights. We disagree.

Miranda establishes that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (*Miranda*, *supra*, 384 U.S. at p. 444.) In reviewing appellant's *Miranda* claim, " . . . we accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained." (*People v. Cunningham* (2001) 25 Cal.4th 926, 992; see also *People v. Thomas* (2011) 51 Cal.4th 449, 476 (*Thomas*).)

Detectives Suarez, Escalante, and McAlpine testified at the hearing on appellant's *Miranda* motion along with Detective Ohad Katzman, who was present during part of appellant's interview. On the night in question, Suarez and

McAlpine approached appellant as he was walking toward his front door and asked to speak with him. After the detectives made contact, appellant put his hands in his pockets. Suarez, who was concerned about her and McAlpine's safety, drew her gun and repeatedly ordered appellant to remove his hands from his pockets. Instead of complying, appellant turned his back on Suarez and began walking away. Appellant eventually removed his hands from his pockets and Suarez reholstered her gun.

Officers Killian and Brisslinger arrived during the initial encounter and Escalante arrived shortly thereafter. Appellant put his hands back in his pockets and Escalante told him in English to remove them. Appellant seemed confused so Escalante repeated the command in Spanish and told him to put his hands on top of his head. Appellant did not comply. Escalante took appellant's arms, placed his hands on his head, and told him to interlace his fingers behind his head. Appellant complied. A patdown search was conducted and a small knife was removed from his pocket.

Escalante told appellant there were some problems with his family and that she wanted to talk with him at the police station. Appellant agreed to do so and Escalante asked him whom he wanted to ride with to the station. Appellant chose to ride with Escalante. He was not handcuffed or restrained in any way and was unaided as he got into the back seat of Escalante's

unmarked car along with Suarez. Appellant was relaxed and conversational during the five-minute drive to the station.

When they arrived at the station, appellant opened his door and got out of the car without assistance. Upon arriving at the interview room, Escalante verified appellant's understanding that he was not under arrest, could leave at any time, and was free to refuse to answer any questions asked of him. Over the course of the interview, appellant was reminded "[a]t least ten times" that he was there voluntarily and could end the interview whenever he wanted. Appellant confirmed that he knew his way out if he wanted to leave. Escalante offered to conduct the interview in Spanish, but appellant wanted it to be in English. He did not appear to have any difficulty understanding what was asked of him at any point during the interview, which lasted about four hours.

Escalante conducted the interview for the first two hours. Katzman was also present. After Escalante left the interview room, appellant appeared to be more comfortable talking about the allegations against him. He spoke casually and "seemed like he was pretty relaxed." He never appeared to be fearful and gave no indication that he wanted to leave or refrain from answering any questions.

Appellant testified at the *Miranda* hearing. He claimed that he only speaks a little English and did not

understand what the police were saying to him at his apartment that night. He also claimed that he was handcuffed and placed alone in the back of a patrol car. He denied being told he was not under arrest and that he was free to leave at any time. Over appellant's objection, the prosecution was allowed to present further evidence demonstrating that the encounter at appellant's residence lasted no more than five minutes.

Appellant argued that he was entitled to *Miranda* warnings prior to the interview because he was in custody and subjected to an interrogation. The prosecutor countered that appellant had merely been subjected to a "very brief" detention when first contacted but was not in custody during the interview. The court agreed with the prosecutor and also found that appellant's testimony was not credible. The court opined that Escalante "did everything she possibly could . . . to try to distance the initial contact at the residence and to make it clear to [appellant] that he wasn't under arrest at that he was free to leave." The court also noted that appellant was "driving" the first half of the interview "[a]nd at no time did [appellant] say he didn't want to talk to them. At no time did he ask for an attorney. At no time did he ask to leave. At no time did he say he was uncomfortable and wanted to end the interview. [¶] So based on the totality of the facts, I do not find a *Miranda* violation."

On appeal, appellant does not contend, as he did below, that he was in custody at the time of his interview or that the interview amounted to an interrogation. He instead claims for the first time that *Miranda* warnings should have been given because the "taint" of his initial detention at his residence "was not sufficiently dissipated" by the circumstances that followed the detention and preceded the interview. This claim is forfeited. (*People v. Combs* (2004) 34 Cal.4th 821, 845.)

In any event, the claim lacks merit. Appellant relies on *People v. Storm* (2002) 28 Cal.4th 1007, and *Missouri v. Seibert* (2004) 542 U.S. 600. Those cases, however, address whether the "taint" of a statement obtained in violation of *Miranda* can be "dissipated" by a subsequent voluntary statement obtained without such a violation. (*People v. Storm*, at pp. 1029-1030; *Missouri v. Seibert*, *supra*, at pp. 604-605.)

The question here is whether appellant's brief detention at his residence triggered the duty to give *Miranda* advisements prior to his interview. It did not. "' . . . . For *Miranda* purposes, . . . the crucial consideration is the degree of coercive restraint to which a reasonable citizen believes he is subject *at the time of questioning*. Police officers may sufficiently attenuate an initial display of force, used to effect an investigative stop, so that no *Miranda* warnings are required

when questions are asked.' [Citation.]" (*Thomas*, *supra*, 51 Cal.4th at p. 478.)

Three cases are instructive. In *People v. Holloway* (2004) 33 Cal.4th 96, the police discovered that the defendant had known the deceased rape victim and was on parole for assault. The police contacted the parole office and indicated that they wanted to speak to the defendant. When the defendant went to the office for drug testing, the officer on duty handcuffed him and called the police. When the police arrived about 20 minutes later, they released the defendant from the handcuffs and asked him if he would accompany them to the police station for questioning. The defendant agreed and rode to the station in the back seat of a patrol car, even though he had been given the option to drive himself. (*Id.* at p. 120.) The Supreme Court upheld the trial court's finding that *Miranda* warnings were not required because the defendant was not in custody when he was questioned at the police station. (*Ibid.*)

In *In re Joseph R.* (1998) 65 Cal.App.4th 954, a witness told a police officer he had seen two boys throw rocks at a bus and then run into a residence. The officer went to the residence and told one of the boys, Joseph R., that a witness had seen him throw a rock at a bus. After Joseph denied his involvement, the officer handcuffed him and placed him in the back of the patrol car for about five minutes. When the officer

returned, he took Joseph out of the car and removed the handcuffs. The officer said it was "'a pretty stupid thing' to throw rocks at a bus and Joseph replied, 'Yeah, it was a pretty dumb thing for us to do.'" (*Id.* at p. 957.) In concluding that *Miranda* warnings were not required, the court of appeal reasoned among other things that "when [the officer] began questioning Joseph, Joseph had been released from the temporary restraints he experienced while the officer tended to another aspect of his investigation. By the minor's own admission, he was never told he was going to be arrested, but he *was* told he need not answer the officer's questions." (*Id.* at p. 961.)

Finally, in *Thomas*, *supra*, 51 Cal.4th 449, a police officer asked the defendant to accompany him to his patrol car and told him "he was going to be detained" as a witness to a murder. (*Id.* at p. 476.) The officer put the defendant in the back seat of the patrol car and closed the door, which could not be opened from the inside. About 20 minutes later, another officer let the defendant out of the car and asked him to accompany him to the rear of the car. The officer asked the defendant what had happened that day and continued to speak with him for 20 to 30 minutes, during which the defendant made incriminating statements. (*Ibid.*) The Supreme Court rejected the defendant's claim that he was in custody for purposes of *Miranda* when he was questioned. (*Id.* at p. 478.) The court explained: "[W]e need

not decide whether defendant was in custody when he was in the backseat of the patrol car, because he was not questioned during that time. Even were we to conclude that defendant was in custody when he was detained in the patrol car, it does not necessarily follow that he remained in custody when he was released from the vehicle before he was interviewed." (*Id.* at p. 477.)

Appellant does not cite any of these dispositive cases. *Miranda* warnings were not required here because appellant's brief detention at his residence was sufficiently attenuated from his interview at the police station. It was repeatedly made clear to him that he did not have to participate in the interview and that he was free to leave at any time or refuse to answer any of the questions asked of him. Although he claimed he did not understand what was being said, the court rejected that claim as not credible. Nothing about the circumstances of the detention or the subsequent interview gave rise to an objectively reasonable belief that appellant's participation was anything other than voluntary.

Even if the *Miranda* advisements should have been given, the error would not compel reversal. The independent evidence of appellant's guilt was overwhelming. Accordingly, any error in failing to give *Miranda* warnings was harmless beyond a

reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *Thomas*, *supra*, 51 Cal.4th at p. 498.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Gilbert A. Romero, Judge
Superior Court County of Ventura

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven E. Mercer, Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.